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BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

LARRY BOOTHBY, )  
 )  
Appellant, ) PCHB No. 91-34  
 )  
v. )  
 )  
OLYMPIC AIR POLLUTION CONTROL ) FINAL FINDINGS OF FACT,  
AUTHORITY, ) CONCLUSIONS OF LAW  
 ) AND ORDER  
Respondent. )  
\_\_\_\_\_)

This matter came on as an appeal of Notice of Violation Case No. 0247RM, alleging violation of WAC 173-433-150 for causing or allowing the emission of an air contaminant, smoke, from a solid fuel burning device (woodstove) during a declared air pollution curtailment.

A formal hearing was held June 27, 1991, before the Pollution Control Hearings Board in Lacey, Washington, with Harold S. Zimmerman, Member Presiding, and Annette S. McGee, Board Member.

Appellant Larry Boothby appeared and represented himself. Attorney Fred D. Gentry of Bean, Gentry and Rathbone, represented the Olympic Air Pollution Control Authority (OAPCA). Proceedings were taped and also recorded by Gene Barker and Associates, court reporters. Witnesses were sworn and testified. Exhibits R-1 through R-4 were admitted and examined. Argument was made. From the foregoing, the Board makes these:

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 91-34

1 FINDINGS OF FACT

2 I

3 On January 4, 1991, Larry G. Boothby was living at 3327 Stikes  
4 Drive SE, Lacey, Washington. An armored car employee, Mr. Boothby was  
5 home that afternoon. That day had been declared an impaired air  
6 quality day, and a burn ban on use of wood stoves had been announced  
7 about 9:00 a.m.

8 II

9 OAPCA air inspector Robert Moody was patrolling on Stikes Drive  
10 and at 2:49 p.m, he took a picture of the Boothby residence, which  
11 showed some smoke coming out of the chimney. Mr. Boothby's pickup  
12 truck was parked in the driveway of the residence.

13 III

14 After the burn ban had been declared by Charles Peace, OAPCA air  
15 pollution control officer, Inspector Moody telephoned the 20 radio  
16 stations, newspapers and agencies to announce the burning ban for that  
17 day. Two other stations were not reached. (R-3)

18 IV

19 The day before, on January 3, 1991, an outdoor burning ban had  
20 been declared because of impaired air quality, and on that day 13  
21 radio stations, newspapers and other contacts were reached to notify  
22 them of the outdoor burning ban for that day. (R-4)

1 V

2 It takes about 30 to 45 minutes to call the news media with  
3 information on the burning bans.

4 VI

5 A notice of violation and civil penalty assessment of \$50 with  
6 \$25 suspended, was sent by certified mail to Mr. Boothby on January 9,  
7 1991, and delivered January 10, 1991. A letter explaining options  
8 available for Mr. Boothby was enclosed, along with a letter explaining  
9 the legislative amendments of 1987, as well as an "Inadequate Source  
10 of Heat Application."

11 VII

12 Shortly after receiving the Notice of Violation, Mr. Boothby  
13 called the OAPCA office and inquired how the public is notified of the  
14 burning ban. He was informed that an advertisement was run in the  
15 paper about December 7, 1989 and 1990.

16 VIII

17 It has been Pollution Control Officer Charles Peace's decision to  
18 have air inspectors not notify people at their homes at the time of a  
19 burning ban violation by knocking on the door. He set this policy as  
20 a safety precaution for his air inspectors, and chose the certified  
21 mail notice as a preferred system, despite it not having as rapid  
22 impact on impaired air.

IX

The patrolling by the inspectors is to catch the few individuals who do not read the papers, listen to the radio or make no contact with OAPCA about burning bans. As estimated 500 people are notified by mail each year of violations.

X

The Boothby home has a forced air electric furnace and until Mr. Boothby replaced his electric hot water heater with a gas heater, it was primarily an all-electric home. His electric bill averages \$90 a month.

XI

The Board takes notice of OAPCA's Regulation I, governing air pollution.

XII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these parties and these matters. Chapters 70.94 (Clean Air Act) and 43.21B RCW.

II

The Clean Air Act enunciates the basic State policy applicable in this case:

*Limitations on burning wood for heat. Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:*

*(1) Not burn wood in any solid fuel heating device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;*

*(2) Not burn wood in any solid fuel heating device, except wood stoves which meet the standards set forth in RCW 70.94.457, in the geographical area and for the period of time that impaired air quality has been determined, by the department or any authority, for that area. [ . . . ] RCW 70.94.473.*

III

WAC 173-433-150 provides detailed regulations to enforce the Clean Air Act.

It states:

*WAC 173-433-150 Curtailment. (1) A person in a residence or commercial establishment with an adequate source of heat other than the burning of solid fuel shall not burn solid fuel in any solid fuel burning device:*

*(a) Whenever the department has declared an air pollution episode for the geographical area pursuant to chapter 173-435 WAC; or*

*(b) Whenever the department or an air authority has declared impaired air quality for the geographical area, except when the solid fuel burning device is certified under WAC 173-433-100.*

*(2) A person responsible for a solid fuel burning device already in operation at the time an episode is declared shall extinguish that device by withholding new solid fuel for the duration of the episode. A person responsible for a solid fuel burning device that*

1 is not certified under WAC 173-433-100 already in  
2 operation at the time impaired air quality is declared  
3 shall extinguish that device by withholding new solid  
4 fuel for the duration of the impaired air quality.  
5 Smoke visible from a chimney, flue or exhaust duct  
6 after a time period of three hours has elapsed from the  
7 time of declaration of the episode or impaired air  
8 quality shall constitute a prima facie evidence of  
9 unlawful operation of an applicable solid fuel burning  
10 device. This presumption may be refuted by  
11 demonstration that the smoke was not caused by an  
12 applicable solid fuel burning device.

8 IV

9 We conclude that OAPCA has established a violation occurred.

10 V

11 Appellant claims that notice of the ban was inadequate.

12 We conclude that the public notice was sufficient to withstand a  
13 legal challenge. OAPCA has responsibility for a vast, six-county  
14 area. In this case, it used the radio stations local to the ban  
15 area. Moreover, telephone numbers were available for people to call.

16 Individualized notice cannot be expected. As to newspaper  
17 notification, OAPCA cannot always predict the meteorological condition  
18 a day in advance in time for their deadlines.

19 However, in the future, OAPCA might consider further improving  
20 its notice, such as by possibly including some Seattle radio stations  
21 commonly listened to by residents, by ensuring that adequate telephone  
22 lines are available, and should consider reviewing the policy of  
23 knocking on doors of suspected violators to recommend they observe the  
24

1 declared air pollution episode. This could have the dual effect of  
2 more promptly correcting air impairment and could improve the public  
3 service image of the agency.

4 VI

5 The appropriateness of the amount of a civil penalty is a matter  
6 involving consideration of factors bearing on reasonableness including:

7 (a) nature of the violation;

8 (b) prior behavior of the violator;

9 (c) actions taken after the violation to solve the problem;

10 Georgia Pacific v. DOE, PCHB No. 87-45 (1988).

11 In this case, appellant has made recommendations regarding  
12 improvements in notifying alleged violators and air improvement, all  
13 toward the aim of preventing or solving future problems.

14 VII

15 Because air pollution authorities are convinced by experience  
16 that most people are willing and want to obey burning bans to protect  
17 additional air impairment, there logically should be a desire to see  
18 prompt compliance.

19 The direct approach of knocking on doors of homes where there is  
20 an apparent or visible violation would be the most immediate action  
21 being taken to stop the wood burning in the four hour grace period  
22 allowed. Patrolling at such time with warnings being issued could  
23 result in improved air quality, issuing of fewer penalty fines, and  
24

1 may well be the way for the public to develop a new appreciation of  
2 the air authorities, rather than a frustration with how they were  
3 notified that there was a burning ban. A direct mailing of  
4 information on the regulations governing outdoor burning, and indoor  
5 burning of wood stoves to residents of the region may well be money  
6 wisely spent to improve citizen respect and compliance with the  
7 rules. If such were the case, Mr. Boothby's experience would not have  
8 been in vain.

9 VIII

10 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
11 adopted as such.

12 From these Conclusions of Law, the Board enters the following


13 ORDER

14 Notice of Violation is AFFIRMED. The suspension of \$25 of the  
15 \$50 penalty is AFFIRMED.

16 DONE this 18<sup>th</sup> day of July, 1991.

17  
18 POLLUTION CONTROL HEARINGS BOARD

19   
20 HAROLD S. ZIMMERMAN, Chairman

21   
22 ANNETTE S. MCGEE, Member

23 0187B

24  
25 FINAL FINDINGS OF FACT,  
26 CONCLUSIONS OF LAW AND ORDER  
27 PCHB No. 91-34